

² The Board notes that following the June 15, 2020 decision, OWCP received additional evidence. However, the Board’s *Rules of Procedure* provides: “The Board’s review of a case is limited to the evidence in the case record that was before OWCP at the time of its final decision. Evidence not before OWCP will not be considered by the Board for the first time on appeal.” 20 C.F.R. § 501.2(c)(1). Thus, the Board is precluded from reviewing this additional evidence for the first time on appeal. *Id.*

FACTUAL HISTORY

On October 10, 2019 appellant, then a 55-year-old city carrier, filed a traumatic injury claim (Form CA-1) alleging that on September 2019 he experienced a panic attack after a customer threatened to shoot him. He returned to the employing establishment facility and required medical treatment for a panic attack. Appellant stopped work that day.

On October 7, 2019 Dr. Mihir Jittendra Amin, a Board-certified internist, indicated that appellant was disabled from work from September 30 through October 9, 2019.

The record contains one page from an employing establishment accident report form. The form indicated that appellant was delivering mail on September 30, 2019 when a customer used a racial epithet and told him “comeback here or I am going to put a bullet on you.” Appellant returned to the office and asked to see his physician for a panic attack.

In a development letter dated October 22, 2019, OWCP informed appellant of the deficiencies of his claim. It advised him of the type of factual and medical evidence necessary to establish his claim and provided a questionnaire for his completion. In a separate development letter of even date, OWCP requested that the employing establishment provide additional information regarding the claimed employment incident, including comments from a knowledgeable supervisor regarding the accuracy of his allegations and explaining areas of disagreement. It further requested the submission of any documents that corroborated, refuted, or provided insight into the allegations.³ OWCP advised the employing establishment that, under 20 C.F.R. § 10.117(b), it could accept appellant’s allegations as factual if it did not fully reply. It afforded both parties 30 days to respond.

In an undated response, M.P., a manager at the employing establishment, related that an employing establishment scanner had verified that appellant was at the claimed location at the time of the alleged incident. He advised that inspectors with the employing establishment had gone to the address and spoken with the customer, but that the customer had denied the allegations. M.P. related, “We can only confirm that [appellant] returned to this office with signs of being stressed out and asking to see a doctor since he was having an anxiety attack.”

By decision dated November 22, 2019, OWCP denied appellant’s traumatic injury claim. It found that the evidence of record was insufficient to establish that the September 30, 2019 employment incident occurred as alleged.

On December 3, 2019 appellant requested an oral hearing before a representative of OWCP’s Branch of Hearings and Review.

Thereafter, OWCP received a state workers’ compensation form dated September 30, 2019 signed by Dr. Lien Quoc Tran, an osteopath. Dr. Tran obtained a history of appellant experiencing

³ The development letter to the employing establishment specifically requested that it state whether they concurred with appellant’s allegations and, if there were points of disagreement, fully explain and provide supportive evidence. It further requested that they identify any agency employees that had additional information on any of appellant’s allegations and to provide witness statements by such employees.

anxiety, dizziness, and work stress after a customer used a racial epitaph and threatened to put a bullet in him. He noted that appellant had reported the incident to his supervisor. Dr. Tran diagnosed stress and found that he could perform his usual employment.

A telephonic hearing was held on April 6, 2020. Appellant related that he had approached a garage slot to insert mail when a customer gestured for the mail with his hand. He told him “no, sorry” and put the mail in the slot. Appellant continued to deliver mail, but when he was on the other side of the street the customer told him that if he came back he would “put a bullet in” him. He had a panic attack. When he got back to his vehicle, appellant called his manager to report the incident. He sought medical treatment on the date of the incident. Appellant provided the name of the street where the customer lived, which differed somewhat from the name on the claim form. He indicated that the form might have contained a typographical error. Appellant advised that he had not filed a police report.

In a statement dated April 19, 2020, appellant described his emotional and stress-related physical problems subsequent to the September 30, 2019 incident. He related that the employing establishment had not provided him with the investigative report even though he had submitted a written request. Appellant provided the address where the incident occurred. He noted that he had immediately informed his supervisor of the incident and believed that the customer had followed him back to the office in a truck.

By decision dated June 15, 2020, OWCP’s hearing representative affirmed the November 22, 2019 decision.

LEGAL PRECEDENT

An employee seeking benefits under FECA⁴ has the burden of proof to establish the essential elements of his or her claim, including the fact that the individual is an employee of the United States within the meaning of FECA, that the claim was timely filed within the applicable time limitation of FECA,⁵ that an injury was sustained in the performance of duty as alleged, and that any disability or medical condition for which compensation is claimed is causally related to the employment injury.⁶ These are the essential elements of each and every compensation claim, regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.⁷

To establish an emotional condition in the performance of duty, a claimant must submit: (1) factual evidence identifying an employment factor or incident alleged to have caused or contributed to his or her claimed emotional condition; (2) medical evidence establishing that he or

⁴ *Supra* note 1.

⁵ *J.P.*, Docket No. 19-0129 (issued April 26, 2019); *S.B.*, Docket No. 17-1779 (issued February 7, 2018); *Joe D. Cameron*, 41 ECAB 153 (1989).

⁶ *J.M.*, Docket No. 17-0284 (issued February 7, 2018); *R.C.*, 59 ECAB 427 (2008); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

⁷ *R.R.*, Docket No. 19-0048 (issued April 25, 2019); *L.M.*, Docket No. 13-1402 (issued February 7, 2014); *Delores C. Ellyett*, 41 ECAB 992 (1990).

she has a diagnosed emotional or psychiatric disorder; and (3) rationalized medical opinion evidence establishing that the accepted compensable employment factors are causally related to the diagnosed emotional condition.⁸

OWCP's procedures provide:

"An employee who claims to have had an emotional reaction to conditions of employment must identify those conditions. The [claims examiner] must carefully develop and analyze the identified employment incidents to determine whether or not they in fact occurred and if they occurred whether they constitute factors of the employment. When an incident or incidents are the alleged cause of disability, the [claims examiner] must obtain from the claimant, agency personnel and others, such as witnesses to the incident, a statement relating in detail exactly what was [stated] and done. If any of the statements are vague or lacking detail, the responsible person should be requested to submit a supplemental statement clarifying the meaning or correcting the omission."⁹

OWCP's regulations provide that an employer who has reason to disagree with an aspect of the claimant's allegation should submit a statement that specifically describes the factual argument with which it disagrees and provide evidence or argument to support that position.¹⁰ Its regulations further provide in certain types of claims, such as a stress claim, a statement from the employer is imperative to properly develop and adjudicate the claim.¹¹

ANALYSIS

The Board finds that this case is not in posture for decision.

By development letter dated October 22, 2019, OWCP specifically requested that the employing establishment state whether they concurred with appellant's allegations and, if there were points of disagreement, fully explain and provide supportive evidence. It also requested that they identify any agency employees that had additional information on any of appellant's allegations and to provide witness statements by such employees. OWCP further requested the submission of any documents that corroborated, refuted, or provided insight into the allegations. It advised the employing establishment that, under 20 C.F.R. § 10.117(b), it could accept appellant's allegations as factual if it did not fully reply. OWCP afforded both parties 30 days to respond.

⁸ See *S.K.*, Docket No. 18-1648 (issued March 14, 2019); *M.C.*, Docket No. 14-1456 (issued December 24, 2014); *Debbie J. Hobbs*, 43 ECAB 135 (1991); *Donna Faye Cardwell*, 41 ECAB 730 (1990).

⁹ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Performance of Duty*, Chapter 2.804.17(j) (July 1997). See also *S.L.*, Docket No. 17-1780 (issued March 14, 2018).

¹⁰ 20 C.F.R. § 10.117(a); *G.K.*, Docket No. 20-0508 (issued December 11, 2020).

¹¹ *Supra* note 9 at Chapter 2.800.7(a)(2) (June 2011).

In an undated response, a manager at the employing establishment, M.P., advised that a scanner verified that appellant was at the identified location at the time of the claimed incident. He indicated that inspectors had spoken to the customer at the alleged location of the incident, but the customer had denied the allegations. M.P. confirmed that appellant had returned to the office on that date showing signs of stress and alleging that he needed to see a physician for anxiety.

The Board finds, however, that the employing establishment did not adequately respond to OWCP's October 22, 2019 development letter.¹² The employing establishment did not provide a detailed statement indicating whether it concurred with appellant's allegations or any documents that supported, refuted, or provided insight into appellant's allegations. As well, the record supports that an investigation was conducted as investigators with the employing establishment spoke with the customer at the address where the alleged incident occurred; however, the investigative report is not found in the case record.

Although it is a claimant's burden of proof to establish his or her claim, OWCP is not a disinterested arbiter but, rather, shares responsibility in the development of the evidence, particularly when such evidence is of the character normally obtained from the employing establishment.¹³

The case will therefore be remanded to OWCP for further development of the evidence. OWCP shall request that the employing establishment provide a detailed statement and submit all evidence relevant to the identified incident in its possession, including any report of investigation regarding the September 30, 2019 incident. Following this and any further development as deemed necessary, it shall issue a *de novo* decision.

CONCLUSION

The Board finds that this case is not in posture for decision.

¹² *G.I.*, Docket No. 19-0942 (issued February 4, 2020).

¹³ *R.A.*, Docket No. 17-1030 (issued April 16, 2018); *K.W.*, Docket No. 15-1535 (issued September 23, 2016).

ORDER

IT IS HEREBY ORDERED THAT the June 15, 2020 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further proceedings consistent with this decision of the Board.

Issued: August 27, 2021
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

Janice B. Askin, Judge
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Alternate Judge
Employees' Compensation Appeals Board